IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE TWENTIETH DAY OF JUNE
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MS JUSTICE G.ROHINI

WRIT PETITION NO : 16829 of 2001

Between:

Chelluri Nookaratnam, W/o. Tata Rao,

Aged 21 years, Housewife, Narsapuram Village,

Rambilli Mandalam, Visakhapatnam District.

..... PETITIONER

AND

1. The Dy. Election Authority and Revenue Divisional Officer, Narsapuram Gram Panchayat, Rambilli Mandalam, Visakhapatnam District.
2. The Election Officer, Stage-I, Panchayat Elections 2001, Narsapuram Gram Panchayat, Rambilli Mandalam, Visakhapatnam district.
3. The Collector, Visakhapatnam district.
4. Smt. Chintakayala Ramani, W/o. Bala Parameswara Rao, Aged not known to this petitioner, Narsapuram Village, Rambilli Mandalam, Visakhapatnam District.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the

circumstances stated in the Affidavit filed herein the High Court will be pleased to issue the order or orders, directions particularly the action of the 2nd respondent acting contrary to the Rules and Act of Panchayat Raj and thereby set aside the same as illegal, arbitrary, contrary to the Statutory provision of A.P. Panchayat Act, 1994 and its Rules, violative of principles of interest of justice and also violative of Article 14 of the Constitution of India, mala fide and for obvious and extraneous political reasons and consequently directing the 1st and 2nd respondents to declare that the petitioner is validly elected to the post of Sarpanch of Narsapur Panchayat of Rambilli Mandal of Viskahpatnam in accordance with law, in the interest of justice and pass such other order, orders or directions as the Hon'ble High Court deems fit and proper in the circumstances of the case.

Counsel for the Petitioner : MR. M.V.RAJA RAM

Counsel for the Respondents 1 and 3: ADVOCATE GENERAL and G.P. for Panchayat Raj

Counsel for the Respondent No.4: Mr. K.Manik Prabhu

Counsel for the Respondent No.2 : Mr. V.V. Prabhakara Rao

The Court made the following :

THE HON'BLE MS. JUSTICE G.ROHINI

WRIT PETITION NO.16829 OF 2001

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ORDER :

This writ petition is filed seeking a declaration that the action of the 2nd respondent – Election Officer in not declaring the petitioner as elected to the Office of Sarpanch of Narsapur is arbitrary, illegal and contrary to the statutory provisions of the A.P. Panchayat Raj Act, 1994 (for short, 'the Act').

The facts in brief may be noted as under :

The writ petitioner was one of the contestants for election to the office of Sarpanch of Narsapuram Gram Panchayat. It is not in dispute that the office of

Sarpanch of the said Gram Panchayat was reserved for women. It is also not in dispute that altogether four candidates filed nominations including the petitioner and the fourth respondent herein. Admittedly, the fourth respondent filed two sets of nominations and therefore altogether five nominations were received and at the time of the scrutiny all the five nominations were found to be in order. However, subsequently two candidates have withdrawn their candidature and as such only two persons namely the petitioner and the fourth respondent remained in the fray. The 2nd respondent – Election Officer has allotted the symbols of Carrom Board and Auto-rickshaw to the petitioner and the fourth respondent respectively. The petitioner claims that subsequently the fourth respondent has also withdrawn her candidature and the same was allowed by the 2nd respondent. Consequently, according to the petitioner she is entitled to be declared as elected unanimously as there is no rival candidate in the election. Accordingly, she made an application before the 2nd respondent – Election Officer requesting to declare her as elected. The 2nd respondent instead of declaring the petitioner as elected, addressed a letter to the District Election Officer stating that he has wrongly advised the fourth respondent to withdraw her candidature and therefore the mistake may be excused and he may be allowed to proceed with the election process. Aggrieved by the said action of the 2nd respondent, this writ petition is filed.

The contention of the petitioner is that since the fourth respondent has submitted her application under Form-6 withdrawing her candidature and the second respondent has already displayed in the notice-board that the fourth respondent has withdrawn from the election, the petitioner being the only candidate remained in the fray ought to have been declared as elected as per Rule 12 (2) of the Rules. It is further contended that since the 2nd respondent has accepted the withdrawal of the candidature of the fourth respondent, she cannot be permitted to contest and the action of the 2nd respondent in addressing a letter to the District Election Officer seeking permission to proceed with election process is arbitrary, illegal and contrary to the statutory provisions.

The 2nd respondent – Election Officer filed a counter-affidavit stating that he

had permitted the fourth respondent to file two sets of nomination papers initially and thereafter she gave a letter to withdraw her second set of nomination papers. Accordingly, he had permitted the fourth respondent to withdraw the second set of nomination papers and accepted the first set of nomination papers. After scrutiny of nominations, the writ petitioner and the fourth respondent remained in the fray to the post of Sarpanch and therefore the petitioner cannot be declared as elected unanimously. It is further contended that since the election process has already commenced, the writ petitioner cannot maintain the proceedings under Article 226 of the Constitution of India and the only remedy available to her is to file an election petition after completion of the election process.

The fourth respondent filed a separate counter-affidavit stating that she has filed two sets of nominations and that in the list of valid nominations published by the 2nd respondent – Election Officer, her name was shown at Sl.Nos.1 and 4 indicating that she filed two valid nominations. Subsequently, two candidates had withdrawn their candidature by submitting Form-6. It is alleged that the 2nd respondent forced her to withdraw one set of nomination papers on the ground that two election symbols have to be allotted for the two sets of nominations filed by her and the same would create problem. Since she was ignorant of the election laws, as per the directions of the 2nd respondent she has withdrawn the second set of nomination papers by submitting the letter of withdrawal in Form-6. Thereafter, the writ petitioner submitted a representation dated 7-8-2001 to the 2nd respondent to declare her as elected since all other candidates have withdrawn their candidature. However, the 2nd respondent rejected the claim of the petitioner and addressed a letter to the District Election Officer, Visakhapatnam stating that the withdrawal by the fourth respondent was as per his advice and was a mistake on his part in forcing the fourth respondent to withdraw. Thus, it is clear that it was only a mistake on the part of the Election Officer and therefore she shall not be denied her right to contest the election.

The fourth respondent has also filed an additional counter-affidavit, dated 03-11-2004, stating that during the pendency of the writ petition, the writ petitioner had incurred disqualification under Section 19 (3) of A.P. Panchayat Raj Act, 1994 (for

short, 'the Act') by giving birth to a third child on 9-10-2003.

I have heard the learned Counsel for both the parties and perused the material on record.

In exercise of the powers conferred by sub-Section (1) of Section 268 of the A.P. Panchayat Raj Act, 1994, the Government of Andhra Pradesh made Rules regarding conduct of elections to the Members and Sarpanch of Gram Panchayat as well as the Members of Mandal Parishad and the Members of Zilla Parishad. The said Rules issued under G.O.Ms.No.775, Panchayat Raj. Rural Development and Relief (MDL-1) Department, dated 30-11-1994 are called the A.P. Panchayat Raj (Conduct of Election) Rules, 1994. Rule-10 of the said Rules state that any candidate may withdraw his "candidature" by notice in writing in Form-6 signed by him and personally delivered by him to the Election Officer at any time after the presentation of his nomination paper and that the Election Officer shall give a receipt for the same in Form-6 on being satisfied as to the genuineness of the notice of withdrawal and the identity of the candidate.

A Division Bench of this Court in K. VENKATESWARLU vs. GOVT. OF A.P. having considered the scope of Rules 9, 10 and 11 of the Rules held that a combined reading of the said Rules unmistakably shows that the withdrawal by a candidate relates not to any one of his nominations, but to his candidature as a whole and that once the withdrawal option is exercised, the list of valid nominations are to be published without the names of the candidates who have withdrawn. The Division Bench observed that it is clear from the wordings of Rules 10 and 11 itself, which only refer to withdrawal of "candidature". It has been further held as under :

> *"There cannot be any mistake nor any interpretation made that when a candidate exercises the option to withdraw, the exercise is in respect of any one of the nominations only. Such a meaning goes against the provisions of the rule and the form and the entire scheme of the election. There is no warrant for it. The stand adopted by the Election Officer is also patently without any rational meaning as if a candidate has filed more than one valid nominations, there could not be any reason why he would withdraw only one of his nominations."*

In the case on hand, from the record produced by the learned Government Pleader, it is clear that the fourth respondent submitted her withdrawal in Form-6 and the same was accepted by the 2nd respondent – Election Officer on 7-8-2001 itself. If that be so, in the light of the ratio laid down by the Division Bench in the above case, undoubtedly it shall be taken that the 4th respondent has withdrawn her candidature. May be that, the 4th respondent at the instance of the Election Officer wanted to withdraw only her second set of nomination papers, so that she will remain in fray on the basis of her first set of nomination papers. However, once she submitted her withdrawal in Form-6 stating that she is withdrawing her candidature ( ) the only conclusion that can be reached is that she has withdrawn from the contest. The record produced by the learned Government Pleader shows that the notice of withdrawal submitted by the petitioner in Form-6 does contain the expression " " (Candidature).

In the circumstances and for the aforesaid reasons, I am of the opinion that the 2nd respondent was in error in publishing the list of contesting candidates in Form-8 mentioning the names of both the writ petitioner and the fourth respondent.

Accordingly, the Writ Petition is allowed and the 2nd respondent is directed to take the appropriate further steps in accordance with law following the procedure as contemplated under the Rules. No costs.

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20th June, 2005.

gbs

Rule Nisi is made absolute as above.

Witness the Hon'ble Sri Bilal Nazki, the Acting Chief Justice on this the 20th day of June, Two Thousand and five.

To

1. The Dy. Election Authority and Revenue Divisional Officer, Narsapuram Gram Panchayat, Rambilli Mandalam, Visakhapatnam District.
2. The Election Officer, Stage-I, Panchayat Elections 2001, Narsapuram Gram Panchayat, Rambilli Mandalam, Visakhapatnam district.
3. The Collector, Visakhapatnam district.
4. Two CCs to Advocate General, High Court of AP Bldgs, Hyderabad (OUT).
5. Two CD copies.
6. Two CCs to G.P. for Panchayat Raj, High Court Bldgs, Hyderabad.